

**ST 05-5**

**Tax Type: Sales Tax**

**Issue: Books And Records Insufficient**

**STATE OF ILLINOIS  
DEPARTMENT OF REVENUE  
OFFICE OF ADMINISTRATIVE HEARINGS  
CHICAGO, ILLINOIS**

---

---

**THE DEPARTMENT OF REVENUE  
OF THE STATE OF ILLINOIS**

v.

**ABC LEASING CO.,**

**Taxpayer**

**No. 03-ST-0000**

**IBT #: 0000-0000**

**NTL # 00 0000000000000000**

**00 0000000000000000**

**Charles E. McClellan**

**Administrative Law Judge**

---

---

**RECOMMENDATION FOR DECISION**

**Appearances:** Gary Stutland, Special Assistant Attorney General, for the Illinois Department of Revenue (the "Department").

**Synopsis:**

This matter comes on as the result of a timely protest to two Notices of Tax Liability issued to ABC Leasing Co. ("Taxpayer") on November 18, 2002 and November 22, 2002 at the conclusion of an investigation of Taxpayer's records for the period January 1996 through March 2002. An evidentiary hearing was held on November 15, 2003. Larry Robinson, president of Taxpayer, appeared on its behalf. I recommend that the Notices of Tax Liability be made final.

**Findings of Fact:**

1. Taxpayer is engaged in the business of leasing equipment. Tr. p. 20.

2. On December 17, 2001, after initially contacting Taxpayer by telephone, the Department sent to Taxpayer a letter setting February 7, 2002 as the date for commencing an audit of Taxpayer's liability under the Illinois Retailers' Occupation Tax Act<sup>1</sup> for the periods of January 1996 through February 2002 (the "audit period"). The letter listed all of the records that Taxpayer should make available to the auditor for the examination. Tr. p. 19, Dept. Ex. No. 1.
3. At a meeting with Taxpayer on February 11, 2002, the Department requested the books and records listed in the December 17, 2001 letter, but they were not produced. Tr. p. 22.
4. Under date of May 3, 2002, the Department sent Taxpayer a second letter repeating the list of records that it wanted Taxpayer to make available for an audit to commence on or about June 12, 2002. Tr. p. 23, Dept. Ex. No. 1.
5. In response to the May 3, 2002 letter, Taxpayer produced one sales invoice and two purchase invoices, but none of the other records requested. Tr. pp. 24-25.
6. Because Taxpayer had produced no other books and records, the Department used a test check based on the records that were available to it and projected the amount of sales tax and use tax Taxpayer owed for the entire audit period. Tr. pp. 28-31. Dept. Ex. No. 1.
7. The Department chose 1999 as the test check period because it had only the few records Taxpayer produced, so on this basis the Department projected the result of the test check over the entire audit period. Tr. pp. 28-29.

---

<sup>1</sup> Unless otherwise noted, all statutory references are to the Retailers' Occupation Tax Act (ROTA), 35 ILCS 120/1 *et seq.*, sometimes referred to as *sales tax*, or the Illinois Use Tax Act (UTA) 35 ILCS 105/1, *et seq.*, sometimes referred to as *use tax*.

8. The Department then prepared Forms SC-10-K Audit Correction and/or Determination for the entire audit period. Tr. p. 31, Dept. Ex. No. 1.
9. Taxpayer did not file any ROTA returns for the audit period, nor did it self-assess any use tax for that period. Tr. p. 31.

**Conclusions of Law:**

This is a case in which Taxpayer produced almost none of the books and records the Department requested in order to conduct its ROT audit. The ROTA and the Department's regulations require taxpayers to maintain records necessary to determine their correct tax liability. 35 ILCS 120/7, 86 IL. Admin. Code § 130.801. If the taxpayer produces no records for the Department's auditor to examine, the Department may use its best judgment and information in producing its corrected return. 35 ILCS 105/4, *Puleo v. Dept. of Revenue*, 117 Ill.App. 3d 260, 453 N.E.2d 48 (4<sup>th</sup> Dist. 1983). In the instant case, Taxpayer produced none of the books and records that the Department requested, so using the only documents provided by Taxpayer the Department's auditor calculated a test check and projected it for the entire audit period to prepare its corrected return. That satisfies the test set forth in the statute and by the court in *Puleo*.

It is well established that a corrected return as prepared by the Department is deemed prima facie correct. *Masini v. Dept. of Revenue*, 60 Ill.App.3d 11, 14, 376 N.E.2d 324 (1<sup>st</sup> Dist.1978) At the hearing, the Department without more, established its *prima facie* case by introducing its corrected return into evidence. The burden shifted to the taxpayer to overcome the Department's *prima facie* case. *Anderson v. Dept. of Finance*, 370 Ill. 225, 18 N.E.2d 206 (1938); *Masini v. Dept. of Revenue*, 60 Ill.App.3d at 14, 35

In order to overcome the presumption of validity attached to the Department's corrected returns, the taxpayer must produce competent evidence, identified with its books and records, showing that the Department's corrected return is incorrect. *Masini v. Dept. of Revenue*, 60 Ill.App.3d at 15, 376 N.E.2d 324; *Copilevitz v. Dept. of Revenue*, 41 Ill.2d 154, 242N.E.2d 205 (1968); *Dupage Liquor Store, Inc. v. McKibbin* 383 Ill.276, 48 N.E.2d 926 (1943). *Howard Worthington, Inc. v. Department of Revenue*, 96 Ill.App.3d 1132, 421 N.E.2d 1030, 52 Ill.Dec. 167 (2<sup>nd</sup> Dist. 1981).

In the instant case, the Department's *prima facie* case was established when it introduced into evidence its corrected returns. Taxpayer offered no evidence to overcome the Department's *prima facie* case. Therefore, I recommend that the Notices of Tax Liability be made final.

Date: 1/19/2005

Charles E. McClellan  
Administrative Law Judge